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ABSTRACT

Sentencing selected offenders to perform services for the community is becoming an increasingly popular sentencing option for judges. Premised on the notion that a fine and/or jail term is not always in the best interest of society or the offender, many courts have embraced the concept of community service in lieu of the traditional sentences, particularly in cases involving misdemeanors. This document sets forth several types of community service alternative sentencing programs (also known as court referral programs) and discusses the issues and problems typically and/or potentially facing these programs. After an introductory chapter discussing the theory behind alternative sentencing, Chapter 2 describes three different types of alternative community service or court referral programs. Chapter 2 concludes with programmatic issues of concern to planners and administrators of such projects. Chapter 3 presents the legal issues concerning sentencing to community service. Chapter 4 discusses the need and methods for monitoring and evaluating court referral programs. The projects and their results described in this document suggest that sentencing to community service as an alternative to fines and jail may be of benefit to interested communities. (Author)

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SENTENCING TO COMMUNITY SERVICE

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Office of Development, Testing and Dissemination
National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
U.S. Department of Justice

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SENTENCING TO COMMUNITY SERVICE

By

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October 1977

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ABSTRACT

Sentencing selected offenders to perform services for the community has become an increasingly popular sentencing option for judges. Premised on the notion that a fine and/or jail term is not always in the best interest of society or the offender, many courts have embraced the concept of community service in lieu of the traditional sentences, particularly in cases involving misdemeanors. The purpose of this document is to set forth several types of community service alternative sentencing programs (also known as court referral programs) and discuss the issues and problems typically and/or potentially facing these programs.

After an introductory chapter discussing the theory behind alternative sentencing, Chapter 2 describes three different types of alternative community service or court referral programs. At the conclusion of Chapter 2 the major programmatic issues of concern to planners and administrators of such projects are discussed.

Chapter 3 involves the legal issues concerning sentencing to community service. Included in Chapter 3 is a discussion of the statutory bases and legal authority for such sentencing, potential constitutional issues, and the increasingly troublesome issue of potential tort liability of court referral programs.

The fourth and final chapter of the document is a discussion of the need and methods for monitoring and evaluating court referral programs.

The extent to which community service sentencing is currently being used and its impact on the judicial system are questions yet to be answered. However, the projects and their results described in this document suggest that sentencing to community service as an alternative to fines and jail may be of benefit to interested communities.

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CHAPTER 1
INTRODUCTION

Although the traditional sentencing power of the trial court judge is broad, the tools available may not always serve the best interests of the court or the community. Plainly many offenses and many offenders neither deserve nor will benefit from a jail or prison sentence of any sort. Yet a suspended sentence, perhaps with probation, may not be sufficient to impress either the offender, the victim, or the public that the offense involved is not trivial and that the offender has been held to account for his behavior.

In such circumstances statutes often permit the assessment of a fine. In fact, where the offense is a violation rather than a misdemeanor, the fine may be the only sanction available. For the middle class or affluent offender, a fine may have little significance. And for the indigent offender, found disproportionately in the lower criminal courts, payment of a fine may be an undue burden -- or an impossibility. Often the real effect of a fine is to penalize the family and friends of the offender. The legislatures' omission of a range of flexible sentencing tools has been described as "a failure of the highest order".

To fill this gap, sentencing authorities may exercise their discretion to fashion non-statutory sentences unique to the offense and circumstances of the offender. Consider the following cases:

- A judge ordered executives of a meat packing firm who had been convicted of criminal violations to provide 200 hours of service to a youth training project and to hire a designated number of paroled felons through the company's job training program;

- A self-employed cleaner convicted on petty larceny

charges agreed to provide the equivalent of $250 in services to a home for the elderly;

- A judge assigned graffiti scrawlers to clean-up chores; another assigned a defendant convicted on drunk and disorderly charges to the Public Works program of a county Parks Department;

- A judge sentenced the president of a college, convicted of manslaughter (for killing a pedestrian while driving under the influence of alcohol) to lecture for a stipulated period of time on the consequence of drinking and driving.

Each of these cases illustrates the use of community service as a sentencing tool, a form of non-monetary or symbolic restitution to particular victims or the general public. While most courts have imposed the community service sentence only on an ad hoc basis, in a number of jurisdictions more systematic use of this alternative has been achieved by developing an organization to handle placements, screen participants, and supervise the service. In some cases the placement is arranged by a court agency and finalized and supervised by the judge. In other cases, the court sets the number of hours to be served, and then passes the case over to an independent referral program or volunteer bureau which arranges the specific placement and notifies the court of final outcome of the assignment.

Although the systematic use of alternative sentencing is relatively new, participating programs are enthusiastic about the ability of the concept to increase the available array of sentencing options. As one court referral program reported:

> Often jail or fines are inappropriate; thus a suspended sentence was the only course available to the judge. Now with an effective court referral program, an appropriate sentence can be given and enforced.

Anecdotal evidence also suggests that both offenders and the agencies in which they are placed can benefit from the positive psychological effects of working together in a constructive effort to provide service to the community.

Effects on recidivism or overcrowded jails and probation offices are less easily determined. Indeed, in the context of many programs -- which are intended to impress the minor offender with the consequences of his or her actions -- these outcomes are not to be expected. Neither recidivism nor the pressures of overloaded probation caseloads and jail facilities can be appreciably reduced by a program which focuses on a population of minor misdemeanants. If, however, such programs can succeed in providing a low-cost, equitable and humane method of improving individual attitudes toward the community and their own law-violating behavior, the benefits are certainly not insignificant.

This document presents a preliminary discussion of the role and practice of community service as a sentencing tool. The discussion is preliminary as the concept has yet to receive sufficient formal evaluative scrutiny to judge its precise strengths and limitations. Nevertheless, as an innovative practice which is rapidly gaining in popularity, it is useful to begin to define program goals and operating characteristics. Ideally, such a discussion will serve to stimulate further experimentation and careful consideration of the issues of policy and law which surround the introduction of any reform in the criminal justice process.

Chapter 2 begins with descriptions of three structured programs handling community service sentences: the Court Referral Program in Alameda County, California; the Alternative Community Service Program of Multnomah County, Oregon; and the British experiences with the Community Service Order. After a summary discussion of several program design considerations, Chapter 3 addresses a number of legal issues related to community service as an alternative sentence. Particular attention is given to the statutory basis for the practice, and possible equal protection and due process concerns. Finally, evaluation issues and strategies are discussed in the concluding chapter where special emphasis is placed on the need for carefully monitoring the execution of this sentencing option.

CHAPTER 2
PROGRAM DESCRIPTIONS AND PROGRAM ISSUES

There exist different approaches to the use of community service as an alternative to traditional court sentencing. In this chapter, three programs -- two American and one British -- are detailed. These three differ considerably in several respects, including their form of administration and the populations they serve. All, however, share a commitment to community participation in the criminal justice system, a dissatisfaction with traditional sentencing tools, and a belief that custodial sentences are not always appropriate for many offenses against the law.

At the conclusion of this chapter, program experience is summarized with special emphasis on the major programmatic issues of concern to planners and administrators of similar community service efforts. Discussion of these issues, hopefully, will stimulate thought on how to expand and improve the use of community service as a sentencing tool.

2.1 Program Descriptions

2.1.1 Court Referral Program of Alameda County

In Alameda County, California, municipal court judges make extensive use of work-placements at local voluntary and public agencies as an alternative or supplement to traditional sentencing. While many of these referrals are handled directly by the courts, the Court Referral (CR) Program is heavily relied upon as an intermediary placement service. Over the last three years, about 13,000 offenders have been placed in community service through the efforts of this program.

The Court Referral Program was established by the Volunteer Bureau of Alameda County in October, 1966, through the efforts of Municipal Judge Jacqueline Taber and the Executive Director of the Bureau. The project's goal is to administer the transfer of selected offenders (those with minor sentences) from the criminal justice system into service to the community.

Initially, the program focused on female traffic offenders, many of whom could not pay any fine, and for whom a jail sentence might create family hardship. As the program developed, male offenders and misdemeanants were also referred, as well as selected felons and juvenile offenders.

For the most part, Court Referral participants are individuals convicted of traffic and parking violations, although roughly one-third have been convicted of penal code offenses. (Of these, roughly 40 percent were convicted of disorderly offenses, petty theft, or malicious mischief.) The largest categories of offenses are minor traffic violations (37 percent in 1976) and drunk driving (17 percent in 1976). An increasing number of cases (22 percent in 1976) are on formal probation supervision.

Court Referral Program reports emphasize that the program is not part of the criminal justice system, but rather is one aspect of a community service volunteer program.* As such, it takes no part in sentencing decisions. While referrals have expanded rapidly over the last three fiscal years, staff note that the courts continue to use a variety of other placement avenues.

Participation in the program is voluntary. The offender is aware that community service is an alternative form of sentencing but may opt for the traditional fine and/or jail term. Potential participants are referred to the program by the court after the court, in consultation with the defendant, has decided on a work

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* In 1974 the Bay Area Social Planning Council developed a "Model Court-Ordered Work Program" at the request of the Volunteer Bureau. Like the CR Program presently in operation, this Model stresses the separation of the program from the criminal justice system.

sentence and the number of hours to be served. Criteria for selection of participants vary somewhat among judges, but certain guidelines (primarily to do with willingness and ability to perform some task) have been jointly agreed upon by the courts and the project. All referrals are interviewed in person prior to placement for purposes of screening and matching client interests and talent with agency needs. In FY 1976, the CR Program handled 4,759 interviews and arranged placements for 98 percent of those interviewed.*

Consistent with the project's emphasis on minor traffic offenders, slightly more than half of the referrals are assigned to forty or fewer hours of community work. However, as Table 1 indicates, roughly a quarter are assigned over 80 hours of work, and assignments in excess of 400 hours are sometimes made.

Table 1
Hours Assigned to CR Participants

Hours Assigned	FY 1974	(%)	FY 1975	(%)	FY 1976	(%)
4 - 16	1130	(30%)	1216	(26%)	1057	(22%)
17 - 40	1005	(27%)	1396	(30%)	1350	(28%)
41 - 80	711	(17%)	895	(19%)	1204	(25%)
81 - 160	398	(16%)	826	(18%)	851	(18%)
161+	295	(8%)	355	(8%)	297	(6%)
Not Available	8	(0.2%)	2	(.04%)	–	–

* Between 8 and 17 percent of court referrals fail to appear for their interviews. These are referred back to the court.

The type of work court referrals perform varies. Nearly sixty percent of CR placements are for maintenance or clerical work. In the Alameda County program, the age of interviewees ranges from 14 to 79 years, and only a third of the participants are employed. Maintenance work in the program is both skilled and unskilled: animal care, school watchman, recycling, janitorial, carpentry, repairs. Clerical work includes typing, filing, collating, and addressing. CR volunteers have worked in free clinics, rest homes, and convalescent homes; in libraries, rehabilitative and counseling services; in multi-purpose social service agencies (such as Red Cross); and for informational and referral consumer services (e.g., legal, housing, employment). Some have worked in parks and churches, and for city governments. In some cases, participants have volunteered to donate additional time following the completion of their court-assigned tasks. For instance, the project reports the case of a security guard who was referred to a self-help ghetto organization to do three days' work as a staff aide. He is still volunteering there, 30 hours a week, in addition to his paid employment.

From July 1, 1976, to June 30, 1977, approximately 600 different agencies used the services of court referred volunteers. Each year, over 80 percent of those placed complete their assignments; thus, the program has provided over 400,000 hours of service to participating agencies.

When agencies report to the CR staff that a referred volunteer has not fulfilled an assignment, the staff informs the sentencing court in writing. In part due to understaffing, the CR program cannot adequately follow up on such cases. However, staff report that courts often refer such offenders back to the CR Program, with additional volunteer hours to be completed.

The CR Program operates on a budget of $145,000. All these funds come from the County of Alameda and are allocated as part of the County Probation Department budget. At the end of 1976, the program had eight full-time and five part-time staff.

In summary, the Court Referral Program represents a successful effort to find and use sentencing alternatives in the community. Initially the program had hoped to serve juvenile and more serious adult offenders as well as those convicted of minor misdemeanors and infractions. However, patterns of sentencing to the program

have remained remarkably stable while the number of referrals have increased over the years, indicating that few judges are using this sentencing alternative for more serious kinds of offenses. As it has evolved, the program does not deal significantly with juveniles or felons. One reason may be the concern of participating agencies that these offenders require a great deal of supervision -- more than the agencies can provide, and more than the CR Program, which reports that it is understaffed for the volume of its referrals, can presently handle.

Understaffing may be a factor in other areas of the program as well. An understaffed program does not have the necessary resources to establish effective and sufficient liaison with the agencies or the courts. As reported by the project, the CR Program cannot adequately follow up referred offenders who fail to show up for their volunteer work. The influence of this situation on the courts is unclear, but there is little question that greater staff contact with agencies employing CR volunteers would enhance the quality of the program.

Concerning more serious offenders, a 1974 Office of Criminal Justice Planning (OCJP) evaluation noted a decline in referrals of felony cases and concluded:

> Project staff have made concerted efforts at expanding the program to include felons. However, it does not appear that the courts are willing to utilize court referral as a dispositional alternative in these cases. It is concluded that unless there is a considerable shift in public as well as judicial attitude toward the 'punishment' of convicted felons the project will continue to be limited to participants convicted of minor crimes.

In this vein, the CR Program has relinquished its plans for juvenile offender placements. The 1974-75 Annual Report notes that:

> It was impossible to give youthful offenders the close supervision and follow-up they require with present program size, and it was difficult to find them rewarding placements outside of school hours.

The project reports that, "...help is...needed to retrieve and analyze data which might lead to changes in policy or procedures." The busy CR staff is unlikely to be research-oriented or have time to collect extensive data which might be used in evaluation or further program analysis. Nevertheless, the clear increase in the court's use of the program over the years (from 1848 referrals in 1972 to 3547 in 1974) as well as the annual growth in the number of participating agencies is clear evidence of the program's success in stimulating judicial interest in the concept of symbolic restitution and involving the community in the criminal justice process.

2.1.2 Other California Experience

In addition to the program in Alameda County, approximately 45 similar efforts have developed in California. As a result of this proliferation, the leaders of the larger California programs have organized the Association of California Court Referral Programs. By holding monthly meetings and publishing a monthly newsletter, the Association acts as a central voice for all California court referral programs. The association facilitates inter-county referrals, has published a registry of all court referral programs in the state, and has prepared uniform guidelines for setting up new programs in counties which are seeking sentencing alternatives. A copy of these guidelines as adopted by the California Criminal Justice Planning Committee is presented in Appendix A.

Among the California programs is the Orange County Court Referral Program which, although structurally similar to the Alameda program, differs in several important respects. The Orange County Project maintains contact with clients and agencies on a more systematic basis. At the mid-point of assignment to Court Referral, the agencies to which clients have been referred are contacted for the purpose of assessing performance. In addition, those clients who have not had an intake interview at Court Referral, or are not performing satisfactorily, are contacted directly by phone or mail alerting them to their responsibilities and the consequences of not complying with their sentence. It was felt by the program staff that this follow-up contact would encourage clients to report to the project for their placement assignment if they had not already done so or report to their assigned agency as scheduled if they were not currently meeting

the terms of their agreement. This follow-up is also hoped to (a) determine if there is a problem either with the agency staff or with relations between offender and agency and (b) provide data for the Program as to the offender's status at the mid-point of his sentence. Since there is no comparable group which has received this follow-up contact, the effectiveness of this approach in achieving its objectives cannot be determined. However, the program staff feel that it has made a difference in the number of offenders who completed or partially completed their sentence. In addition to the mid-point follow-up, upon reaching completion date the status of all clients is reported to each court of jurisdiction. A bench warrant is issued by the courts for those clients who have not satisfactorily completed their community service hours, unless the client has intervened by requesting an extension of time or by paying a fine in lieu of the community service.

The Orange County Project is also notable for its evaluation efforts. The project has collected significant data relating to the program, utilization of the program by the courts, and personal information relative to clients assigned to the program and their impact on the community service organization in which they served. Further, the program is currently developing a Management Information Service with the Orange County Criminal Justice Council which provides the software and computer time necessary to analyze the available data. Finally, the Orange County Court Referral Program has just completed a comprehensive internal evaluation of the project's first sixteen months, conducted by an independent investigator. In the summary of her Final Report the evaluator concluded that the Orange County Court Referral Program "has been of value to the Courts as a sentencing alternative, to the agencies as an additional source of numerous volunteers, and to the many offenders who benefit from serving as a volunteer in their community rather than paying a fine or being put in jail."*

2.1.3 Alternative Community Service Program

The Alternative Community Service Program (ACSP) of Multnomah

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* Broomfield, Terry K., Evaluation Report: Court Referral Program, Voluntary Action Center of South Orange County, April 20, 1977, p. 2.

County, Oregon (which includes the metropolitan center of Portland) offers the misdemeanant offender the opportunity to perform unpaid volunteer work for a nonprofit agency in addition to, or in place of, traditional court sentences. The program was founded in December, 1972, by Judge Richard L. Unis to "offer the court a sentencing mechanism for distinguishing between the lawbreaker and the criminal while providing much needed and appreciated help to the community (which) repays the community for the expense it incurred as a result of the wrongdoing".

Unlike the Alameda County program, the ACSP is part of the criminal justice system. The program is coordinated by one full-time supervisor working within the court system, and the estimated yearly cost, approximately $18,000, is borne by the court.* At present the program handles approximately 180 referrals per month, using over 150 community agencies.

The program is open to any non-profit agency whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality or general well-being of the community. A variety of community organizations participate, including day care facilities, youth clubs, alcoholism and drug rehabilitation centers, charitable organizations, animal shelters, zoos, and recycling programs. Eighty

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* One important distinction between various court referral programs is whether the project is coordinated and run by the court or by an independent organization such as the Voluntary Action Centers in California. Besides the Multnomah County ACSP project the Alternative Positive Participation Sentencing Program Project in Misdemeanant Court, Winoma County, Minnesota, is also a court directed project, initiated by Judge Dennis A. Challeen. Court-run projects benefit from judicial funds which might otherwise be unavailable and from the flexibility resulting from direct input by the judge in arriving at the specifics of the alternative sentence. In the Winoma County Project, for example, Judge Challeen allows the offender to recommend his own alternative sentence which, upon approval by the court, becomes a contract, the conditions of which are followed up by Court Services. The Winona County Project reports that this process results in a significantly lower recidivism rate among project clients than is otherwise the case.

percent of ACSP participants successfully complete their work programs* and provide help to the community in a number of ways. For instance, a taxi driver provided needy persons with 40 hours' worth of free transportation to medical facilities and a carpenter built a wheelchair ramp for a senior citizen. In another case, an agency supplied tools and materials, and volunteers made repairs to the houses of low income senior citizens. As in the Alameda County project, agencies have reported that some volunteers offer to donate additional time, after they complete their court-assigned time. It is reported by the project that in its first 22 months of operation, 54,437 person-hours (26.17 person-years) of community services have been contributed by 2,668 individuals who were charged with misdemeanor offenses. The popularity and broad based acceptance of this project is clearly indicated by the fact that as of August 1977, 225,305 person-hours (107.21 person-years) of community services have been contributed by 8,661 individuals.

While this program is sometimes used as an avenue for pretrial diversion, it functions primarily as a sentencing tool. The program attempts to provide a more equitable sentence without regard for socio-economic or financial status. In most instances, the court allows offenders to choose the nonprofit agency where they will work. However, in some instances, such as drunk driving or vandalism, the court may require the performance of specific tasks related to the offense. In about 14 percent of the referrals made through October, 1974, community service had been imposed as a condition of probation. Placements are typically arranged so they will not conflict with employment or family commitments.

A specific number of hours of volunteer work is agreed on by the court and the individual, with 24 hours being the minimum sentence. (See Program Agreement Form in Appendix B.) The program indicates that sentences longer than 80 hours are considered inconsistent with the goals of the program. Judge Unis provided the following examples of "standard periods of service applied by the judges subject to variation on the basis of differing facts":

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* Judge Unis emphasizes that in the remaining cases "the traditional sentence" is imposed. There is "no enhanced penalty for their refusal to participate (or, to complete), unless the participation was a condition of probation." Judge Unis estimates that less than 5 percent refuse to participate in the program.

- first offense, petty theft -- 24 to 40 hours;
- minor in possession of liquor -- 24 hours;
- possession of less than one ounce of marijuana - 24 hours;
- certain charges for driving under the influence of intoxicating liquor -- 40 hours.

When the court determines the duration of service, a referral slip is sent to ACSP, indicating the number of hours to be performed, and the due date by which the work must be completed. The volunteer is then interviewed. To match volunteers with agencies of their choice, a brief appraisal is made of each volunteer's abilities, health, interests, hobbies, attitude, work schedule, and means of transportation. In addition, a volunteer's prior criminal record is reviewed to determine whether a particular placement may be inapprorpiate for that client. For instance, a client with a previous record of child abuse or molestation would not be placed in a day care center.

When an agency is selected, the "contact person" for that agency is called and asked if there is work for a volunteer with specified hours to give and with the required skills. The volunteer is given a written copy of the agency's name, address, telephone number, and contact person as well as a time schedule for completing the work. The volunteer is advised that if anything should arise that might disrupt that schedule, the contact person should be called and alternate arrangements made. It is made clear that it is the volunteer's responsibility to follow through and complete the assignment.

Perhaps because ACSP is an institutionalized program paid for by court funds, statistics on the background of those who participate in the program are quite limited. A 1974 random sample of court referrals indicated that a high proportion of participants were employed (63 percent) and more than half of those held skilled positions. These figures, which are markedly different from the employment rates for the Alameda County Program, support the program's claim that it is a sentencing alternative that operates without regard for socio-economic background or financial status.

A major positive impact claimed for the program is its effect on probation caseloads. Program staff report:

> Intake referrals to Multnomah County Parole and Probation have shown a significant decrease since the inception of the Alternative Community Service Program. It appears that the majority of cases which do not require supervision and counseling are being diverted to the Alternative Community Service Program rather than being placed on probation.

Indeed, Alternative Service referrals (some of which include formal probation) now exceed District Court probation placements.

Agency response to ACSP has also been enthusiastic. Comments from several recipient agencies include the following:

> Our program to provide services to 4,000 senior citizens would not be possible without the participation of court-referred volunteers;
>
> Our staff has been freed to do more professional work;
>
> We have increased the number of people our agency can help;
>
> We all benefit from a program which serves as a model to those who believe that confinement to jail is the only solution to crime.

2.1.4 The Community Service Order in Great Britain

The Criminal Justice Act of 1972 introduced a number of new measures for processing offenders in the criminal courts of Great Britain. Among these was the Community Service Order (CSO), under which consenting defendants may perform unpaid work in their local community in lieu of some more traditional sentence.

Initially, a major objective of this program was to provide non-custodial alternatives for offenders who otherwise would be given short terms of imprisonment. Unpaid community service was seen as

a more constructive alternative than suspended sentences or probation, for CSOs required active participation by the offender, and, in addition, deprived him or her of leisure time. As a program, its objectives are both to sentence (punish) and to rehabilitate: "As a sentence, CSOs were designed to effect a change in the attitude and behavior of offenders through their completion of work of practical value to the community and through resulting association with other non-offender volunteers and beneficiaries."*

Under British law, a community service order may be entered for an offender convicted of an offense punishable by imprisonment, provided he or she is at least 17 years of age and has consented. The number of hours worked (not less than 40 nor more than 240) are specified in the court's order, and normally must be completed within one year. Community service orders are arranged in the offender's local area and an attempt is made to structure them around employment, family, and religious commitments.

Before making such a placement, the court must specifically find, after considering the probation officer's report, that a defendant is suitable for the program. Arrangements for community service are handled by probation officers, who allocate offenders to tasks provided by local voluntary agencies, local government, and probation itself; the probation department also exercises general oversight over the offender's compliance with the court order.

In 1973 the community service order was introduced experimentally in six local court areas, including Inner London. When the Criminal Justice Act of 1972 was before Parliament, Ministers stipulated that the community service order was intended primarily for persons who might otherwise be sentenced to short terms of imprisonment. In several of the experimental areas, however, the probation department has tended to see the program as having wider applicability as a sentencing tool, and has recommended its use in cases where the most likely traditional sentence would not have involved incarceration at all.

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* C. Kaufman, "Community Service Volunteers: A British Approach to Delinquency Prevention," Federal Probation, Vol. 37, December 1973, p. 36.

The Home Office Research Unit conducted a fairly extensive analysis of the experimental areas beginning in late 1972, and some of the results of that research are presently available. The following are the findings of the study:

- Offenders on community service were drawn primarily from the 17 to 24 age range. Almost 98 percent were male;
- Between 38 percent and 50 percent of offenders given a community service sentence had previously served a criminal sentence of some kind;
- Typically the offender on community service had committed a property offense. His most frequent prior offense was also a property offense. Nonetheless there were a number doing community service who had typically committed crimes against the person, motoring offenses, or other offenses;
- The sentencing court accepted a probation recommendation for community service about three quarters of the time. Often the judge specifically instructed the probation officer to investigate the possibility of such a sentence, and the number of such sentences given was strongly related to the number of probation recommendations;
- About a fifth of all community service orders were made in cases where that alternative had not been recommended by probation.

As mentioned above, it was clear to the Research Unit that not all community service orders were made in cases where a custodial sentence would otherwise have been imposed. While the Unit was unable to estimate the extent to which this was true, its research did reveal that when a judge did not accept a probation recommendation for a community service sentence, a custodial sentence was imposed in only a minority of cases. This practice was found even in those jurisdictions where the Probation Service clearly viewed community service as an alternative to imprisonment, and not as a general sentencing tool.

There is a wide variation in the kinds of work offenders perform. Offenders working independently tend to be skilled in a trade in which services are normally provided directly to individual

consumers. These offenders contract to provide a specific service to a particular group of beneficiaries: for example, an electrician may re-wire a home for "battered" wives, a taxi driver may provide transportation for residents of an old-age home, or a hairdresser may set-up shop at a hospital on weekends. Other offenders assigned to work for community service agencies provide any of the range of services generally provided by volunteers. For example, offenders have assisted at youth clubs, hospitals, church halls, charity shops, homes for the mentally or physically handicapped, and residential hostels.

Offender-only work parties have been developed for those offenders for whom independent work is appropriate and who would have difficulty with the contact involved in working closely with other non-offender volunteers or beneficiaries. These groups tend to be given structured tasks, often manual work, involving close supervision. They are frequently assigned to projects developed specifically by the Probation Service and supervised by individuals from the community, hired by the Probation Service and paid on a sessional basis. In some areas, ex-offenders have been used successfully as supervisors of these projects. Tasks illustrative of work developed for offender-only work groups are park maintenance, canal clearance and building construction.

Table 2 shows the distribution of hours assigned by the experimental courts. As of June, 1974, about ten percent of those given community service orders had failed to complete their assignments; 28 percent had completed their work, and the remaining cases (751 of 1172) were still open.

Interestingly, this otherwise detailed study by the Home Office Research Unit made no attempt to interview sentencing judges to determine how they viewed the service order, what factors influenced them in making use of the program, or how they handled those who had failed to complete their assignments.

Two sets of (nonrandom) interviews with offenders participating in the service program were conducted in connection with the Research Unit study. The following are among the findings of the first set:

- Although one intent of the program was to deprive offenders of part of their leisure time, the majority

Table 2

Community Service Orders Made by Type of Court and Length of Order

	Inner London		Southwest Lancashire		Durham		Kent		Shropshire		Nottingham-shire		All areas	
	Higher Courts	Magis-trates Courts	Crown Courts	Magis-trates Court	Crown Courts	Magis-trates Courts	Crown Courts	Magis-trates Courts	Crown Courts	Magis-trates Courts	Crown Courts	Magis-trates Courts	Crown Courts	Magis-trates Courts
40 to 99 hrs	10	41	10	2	2	6	5	14	–	6	7	32	34	101
100 to 149 hrs	31	160	15	59	14	38	11	60	1	14	43	109	115	231
150 to 199 hrs	12	25	3	17	6	13	5	9	–	6	5	20	30	93
200+ hrs	8	26	2	35	7	4	15	9	1	5	12	25	45	104

Source: K. Pease et al., *Community Service Orders* (London: Her Majesty's Stationery Office, Home Office Research Studies, 1975), p. 28.

Note: Orders are included from information available to the Research Unit on 1 June 1974. If orders are made to run consecutively, the aggregate hours are recorded as for one order.

interviewed indicated that they had no leisure time pursuits, and would have otherwise been "doing nothing".

- Participants saw community service as both more positive than, and as clearly preferable to, a custodial sentence. The majority thought the sentence was fair.

- The majority of those interviewed again after completing part of their assignment thought that the work had been worthwhile, and might have helped them in some way.

In another series of 20 completed interviews, 14 felt that they had served the community (only one felt he had not); all but two agreed that, knowing what they did now, they would still have agreed to a community service sentence. If this sentence had not existed, 13 of the 20 felt they would have received a custodial sentence. More than three-quarters reported that the experience had been worthwhile, and 12 of the 20 said that they intended to continue with the community work as volunteers.

The Research Unit apparently did not interview any defendants who were denied such a sentence order, nor any who might have turned down the opportunity. It appears from the report that no one expected a defendant to refuse to consent to such a sentence, since the alternative would be imprisonment. But since the report discloses that many defendants considered for community service are also candidates for even less intrusive sentences, this seems an area that deserves exploration.

As of April, 1975, the Home Office has authorized expansion of the community service program to all 55 probation areas in Great Britain.* This action in itself is some measure of program success in implementing a viable method of supplementing traditional sentencing tools.

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* In Britain, in addition to CSOs, there are other efforts afoot to develop successful alternatives to probation or institutionalization. There exists a program that places juvenile offenders in institutions as volunteer workers. This British volunteer program, Community Service Volunteers (CSVs), aims at "utilizing all kinds of young people...in service to the community, and in developing in-depth understanding of community problems by volunteers." C.S.V., an 11-year-old organization partially modeled on the U.S.

2.2 Program Issues

Among the programs reviewed, there emerge two major areas of program variation: client focus, and structural relationship to the criminal justice system. Because these alternative service programs serve different population groups, it is important that information about participants' experience be channeled back to the courts, to aid in future program development and targeting and use of referrals. Presently there is a lack of mechanisms to provide this necessary exchange and feedback in a systematic way. These issues are discussed in this section.

Program Structure: Relationship of Placement Agency to Criminal Justice Institutions

At an August, 1975 conference in Oakland, California on community service as a sentencing alternative, six possible models of operating community service programs for this purpose were developed:

- direct referral from judge to agency where offender will work
- probation department administers program

Vista program, is funded by a variety of trust foundations and in part by the Department of Education and Science. Through CSV, community service is offered to many young offenders as an alternative to probation. It is intended as both a sentencing alternative and a means of rehabilitation. In this latter respect, it intends to give "disadvantaged" youth the opportunity to have positive, rewarding experiences. Volunteer projects for delinquents have included "taking blind kids on tandem bike rides; shaving old men in old people's homes; giving 'keep fit' classes of physical education classes in mental hospitals; working in hostel shelters for the down and out." While there are admitted problems in placing delinquent youths in community service in the program, one observer comments that "placements thus far have been extraordinarily successful." From: C. Kaufman, op. cit., pp. 36-40.

- Volunteer Bureau or Agency administers program
- an independent public agency administers program
- an independent private non-profit agency administers program
- court personnel administer program*

The programs surveyed for this document offer an interesting picture of the various institutional arrangements under which community service programs operate.** A study across programs of their varying structural and administrative arrangements might well yield useful information on cost efficiency, program growth, liaison with courts and agencies, and other operational concerns.

The Alternative Community Service Program is supervised by a judge and his court administrator, and placements are handled by an administrative staff member. Community Service Orders in Great Britain are handled through the Probation Department and cases are supervised by special community service officers in the Department. Another referral program in California, surveyed but not described here, exists under the general auspices of the county Probation Department, but is actually operated by a volunteer group with close ties to probation. In this instance, the agencies that receive placements are also expected to lend a hand in operating the program. In yet another case, a program that was initially funded through a private foundation now receives CJCC/LEAA funds. It was jointly developed by a Municipal court, a "Bail Project", and a police department's Community Relations Unit (which continues to provide some staff and office space). Alameda County's Court

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* Community Service: A Sentencing Alternative. A Conference on Court Referral Programs in California, Oakland, California, August, 1975, p. 19. Conference proceedings printed and distributed by the Department of Youth Authority, Sacramento, California.

** In addition to these institutional arrangements, participants in the American programs may be on formal or informal probation caseload.

Referral Program is operated by paid staff and volunteers from an independent volunteer-placement group. Though it has limited contact with the sentencing court, it is in continual contact with Probation.

Of these possible combinations, it is often felt that probation departments are too overburdened by caseloads to handle additional responsibilities. Indeed, a significant benefit of community service programs is often the reduction in caseload they occasion. Similarly, heavy courtloads often prohibit court personnel from actively undertaking community service placement or supervision.

However, an important factor in a program's structure and in its relationship to criminal justice institutions is access to background and evaluation data. In most court systems the only source of extensive descriptive data about defendants (including prior criminal history) is in the probation department. Those interested in following up unsuccessful clients in later court processing, or in comparing a formal program to informal court placements, or in attempting to evaluate any program effect on recidivism, will almost inevitably require access to probation and court records. Also, any evaluation of community work sentencing requires a range of detail on how sentences were determined.* Patterns of institutional reliance and cooperation, as well as effectively developed liaison on several levels, are sure to make a difference in the accessibility of such records.

This presents a thorny issue because many programs insist on independence from the court system and thereby run the risk of not having close relations with criminal justice institutions -- relations that are in many cases necessary to the success of a program. As the Home Office Research Unit's report emphasized, the probation officer, through his pre-sentencing report, is the key to a court's utilization of community service. Several evaluations of the Court Referral Program noted that, although the program was making strong

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* For example, with the partial exception of Alternative Community Service, few programs know how hours are set -- even where fines are being worked off, programs are unaware of the "rate" applied in various courts. The likely variability of those rates is a particularly troubling issue.

efforts to arrange referrals for more serious misdemeanants and felons, courts rarely used CR for such cases.

Independence from the criminal justice system is often important to groups willing to operate the placement network. Staff of Alameda County's Referral Program consider the independence of their program from the sentencing court and probation department a critical aspect of their operation. Further, channeling a court's referral through an agency that handles volunteers may make the work experience a more positive one for the court-referred participant, who is treated throughout as a volunteer rather than a criminal. For those programs especially concerned with rehabilitation, this is a crucial point. Some groups feel that they, not the courts, have the necessary experience and knowledge to best handle volunteer work placements. One program (again, reviewed but not described here) that is fiercely independent of the court system emphasizes that, "as a working principle, the exposure to the probation system of participants in a court-ordered work program should be minimized." This is an interesting suggestion, for some 20 percent of the program's court-referred participants are on formal probation.

In practical terms, some degree of independence may be an important factor in obtaining special funding from groups outside the local criminal justice system. Without such funding it is unlikely either that program operations will be extensively documented or that evaluation will take place, for, in most cases, staff are unwilling to systematically gather data unless there are external pressures for the information. One referral program emphasized its ability to handle a large and growing volume of placements at a very low cost. That low budget operation, however, also meant that there were no data available on the characteristics of the population served. In addition, this program's decision not to screen participants in personal interviews may have been a factor in its relatively high rate of incomplete assignments.

2.2.1 Program Focus: Sentencing Areas in Which Community Service is Presently Utilized

Judges often feel that traditional sentencing tools -- fines, jail term, or probation -- have little relevance for many of the

offenders they handle. This is often the case when they must sentence "essentially law-abiding" individuals who have committed a single, serious criminal act. It is also true of a majority of defendants who appear before the courts on less serious charges for which a jail sentence is not appropriate (small thefts, brawling, malicious mischief, vehicular violations, parking charges not paid), and of defendants who would be unable to pay any sizeable fine without family hardship. In these cases, "straight" probation may also not match the seriousness of the situation nor be likely to have lasting impact on the defendant.

Alternative community service programs address a need in these frequently encountered court situations. In jurisdictions where court referral programs are set up, use of the alternative by judges expands very rapidly, reaching several thousand cases per year. In the busy and well developed program in Alameda County, for example, 1908 referrals were placed in FY 1974, 4690 in FY 1975, and 4759 in FY 1976. This applies, however, only within the petty misdemeanor and vehicular violation areas; judges have not shown consistent interest in such alternatives where serious and/or felony charges are involved. Also, as discussed earlier, many programs do not handle juvenile offenders.

The record of community service programs to date in the United States indicates that they have been used primarily for cases that might otherwise be handled by fine or probation, rather than for cases in which a jail sentence is the traditional alternative. In some situations this is an explicit facet of the program; elsewhere, it is simply a characteristic of the caseload.*

This pattern contrasts with the British use of the "community service order", which is directed to offenses punishable by imprisonment and is intended for persons otherwise likely to receive a prison sentence. While this intent is not entirely realized in practice, it is clear that both the offenses and the offenders in community service order cases are relatively serious -- 90 percent of the court-referred participants had a prior criminal record

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* Some programs were set up as an avenue to "work off" fines; even those with a broader mandate show a high proportion of their caseload convicted of code violations and parking infractions rather than misdemeanors.

(with a median of between three and four prior convictions each) and 40 percent had previously been incarcerated.

As yet there are no collected data on the criminal background of participants in the American programs reviewed, and one has only informal impressions about the extent to which courts use community service as an alternative to imprisonment. On the basis of those impressions, it is apparent that such sentences are primarily used for defendants with minimal prior criminal records and that community service is largely used as a supplement to probation or in place of a fine, rather than as an alternative to imprisonment. Judges in the United States appear to make particularly heavy use of community service sentences where the charged offense is "alcohol-related", and especially where the defendant has been convicted of "driving under the influence of intoxicating liquor". This area has been a particularly difficult sentencing challenge in some judges' eyes, because of the felt need to impose a sentence which will substantially inconvenience a defendant ("shake him up") without resorting to a jail term.

There are significant differences among the alternative sentence programs within the United States. For example, in some programs the court and defendant agree on community service in lieu of sentencing; some courts, at the defendant's request, combine a fine with community service; in other programs the community service option may be introduced only after it becomes apparent that a defendant cannot pay a fine assessed by the court. This latter use of the community service alternative involves primarily indigent defendants who are "working off" assessed fines at rates stipulated by a court.

The differences between the use of community service as a positive sentencing and rehabilitative tool and its use as a work-off option for those unable to pay their fines is a crucial one. The different intentions behind alternative sentencing must be assessed separately when discussing benefits of the programs, and when discussing legal issues. In particular, the work-off option may, in operation, raise serious constitutional questions (see Chapter 3). Moreover, the issues that might motivate certain groups to encourage the use of community service as an alternative to imprisonment may be quite different from the issues motivating those who view

such service as a useful addition to the sentencing and probationary powers of the court.*

While community service provides an alternative in sentencing, there is some concern about its varying uses by different judges and different courts. Presently, there is little or no standardization of court referred community service work sentences. Some uniformity -- of procedures, of appropriate guidelines by which judges make referrals, and of number of hours required for the various offenses -- might well be called for; such a move could also work towards providing for community service for certain offenses, regardless of a person's ability to pay a fine. However, while there are convincing arguments for creating some uniformity in sentencing, perhaps even through judicial council or in the legislature, there is the possibility that such actions might make the whole process rigid and inflexible. Although discrepancies exist, many judges will want to retain their discretionary powers, so that individual circumstances can be considered while sentencing.

2.2.2 Targeting and Serving Appropriate Populations

This review of American and British experience with community work makes it apparent that programs may serve characteristically different populations. This is one reason why feedback to the courts about the experiences of participants both during and after program assignments can be so important. Not only can such knowledge assist the court in tailoring referrals to the capacities of the program, but feedback may persuade judges that they can "risk" more serious cases on community service programs. Some of the programs we reviewed do hope to operate as alternatives to incarceration and are eager to work with "serious" cases; it is unlikely that this will happen until the programs convince the courts not only that serious cases can be adequately supervised by the program,

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* For one discussion of the "widening intrusion" impact of "diversion" programs generally intended to reduce such intrusion, see Comment, "Pretrial diversion: the threat of expanding social control," 10 Harvard Civil Rights-Civil Liberties Law Review 180 (1975).

but also that participation in the program may have some positive impact on those cases.

Informal community work is often perceived by courts as the best available solution to a range of "juvenile crimes", such as vandalism and petty theft, which are often pieces of a larger neighborhood framework. It appears, however, that it is much harder to develop structured community work programs for juveniles. The CR Program, for example, has given up the handling of juvenile referrals because of the operational difficulties involved, e.g., the need for close supervision, coordination with school hours, and finding appropriate placements. In the British program, these operational obstacles are somewhat lessened because of the extensive network (nearly 300) of volunteer groups that are anxious to work with offenders and willing to supervise closely and follow up community work done by offenders.

It is also true, however, that juvenile courts did not respond as strongly to the possibility of community service placement as did the adult courts. We suggest that this might be because the juvenile courts want to tailor specific offense-related assignments, while most of the programs we reviewed were "blanket" referrals whereby the court made the referral, but the agency made the placement.

An exception to this pattern is the Alternative Community Service Program. There the sentencing court appears to retain substantial control over the quality and terms of placements, thus making possible assignments which "fit the crime". It may be that other programs which also are prepared to work closely and flexibly with the sentencing judge will be more likely to obtain juvenile placements.

The continuing court option of approaching community service through direct, informal assignment raises two further questions in the "targeting" of appropriate referral populations for structured programs. First, one may want to determine under what conditions referral through an independent intermediary such as a referral program is necessary. In this regard, close attention should be given to the intermediary's capacity to provide supervision over placements, and adequately to inform the court when assignments are not fulfilled. In many cases, the intermediary may have closer ties

to the programs seeking placements than do the courts, or they may be better equipped to provide supplemental services where appropriate.

Second, it would seem relatively important for the referral unit which has "targeted" a particular population and which has set a number of caseflow management objectives to know how the court is utilizing the unit. Are many cases which unit staff feel are appropriate for referral being handled in other ways, such as by informal placement, by straight probation, or by other referral agencies? If so, are the other uses by the court due to disagreement with a community service referral program over appropriate criteria for referrals, or because of inadequate or hostile chains of communication? Without answers to such questions, both target and objective setting are largely shots in the dark; perhaps more important, without such information, achievement of target and objective has no certain significance.

CHAPTER 3
LEGAL ISSUES CONCERNING COMMUNITY SERVICE AS AN ALTERNATIVE SENTENCE

A considerable amount of information has become available regarding how court referral programs operate and the types of placements that are offered to misdemeanants in lieu of fines and/or jail. However, there is a dearth of data and analysis on how the sentencing agencies, i.e., the courts, perceive and use such programs. Furthermore, alternative sentencing seems to be in an experimental stage legally. As far as can be determined to date, no litigation has contested its use and there is almost nothing in the literature dealing with potential legal or constitutional conflict with alternative sentencing.

Nevertheless, the practitioners of alternative sentencing would do well to consider the potential legal conflicts so as to minimize the risk of their occurring, and to be prepared should they arise.

3.1 Statutory Basis and Legal Authority For Alternative Sentencing

It should be noted at the outset that the power of a judge to sentence those convicted of a crime is clearly statutory. In part because of the newness and untested use of widespread alternative sentencing, and in part because criminal justice generally, and sentencing in particular, have become politicized, few state legislatures have written the community service option into state sentencing laws. As mentioned in Chapter 1, this omission has been described by observers of the criminal justice system as a "failure of the higest order." The practical effect of not having a community service option built right into legislative sentencing authority is that its use is discretionary, variable and, at least arguably, beyond the power of courts in some jurisdictions.

While judges in some jurisdictions clearly feel that the power to require some community service as a condition of probation can be derived from the language of their existing probation statutes, other observers are not so sure. And some jurisdictions' statutes probably would not support such a practice. Furthermore, at a time when much thought is being given to regularizing and restraining the judiciary's sentencing discretion,* it may be unwise to leave to the courts broad control over the development of a new sentencing option, even when it may fall within their authority under general probation statutes.

Another statutory issue of alternative sentencing, separate from the judges' authority, concerns the tendency of such programs to be independent of the states' criminal justice system, as described in Chapter 2. A growing question within the judiciary concerns the proper role for outside agencies in the area of placement and supervision. In some of the community service programs, the regular probation department of the court appears to play no role whatsoever. The disposition and followup is a matter solely between the judge and the outside agency.

Because of increasing caseloads, there are those who feel that any lessening of the load for probation officers is important, particularly when the types of defendants eligible for community service programs do not appear to be hardened criminals. However, these concerns do not address the central issue of legislative authority for community service programs.

The need for some legislative authority can be seen particularly in the area of the number of hours to be served, which is frequently a decision made solely by the judge. For example, in the Court Referral Program of Alameda County, statistics indicate that over one-half of the defendants were sentenced to 40 or fewer hours of community service. This may well reflect the less serious nature of the offense; for example, in that program, 57% of the defendants in the program were convicted of traffic offenses.

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* See e.g., M. Frankel, Criminal Sentences: Law Without Order (New York: Hill & Wang, 1972).

Most community service programs arise out of some form of disposition relating to probation and it is in the area of probation where considerable latitude is allowed the judge by both appellate courts and legislative bodies. Many state statutes have language similar to 18 U.S.C. 3651, providing for probation, "upon such terms and conditions as the court deems best".*

In California, where community service sentences are widely used by lower court judges, the Penal Code (Sec. 1203.1) specifically empowers the judge sentencing an offender to a probation term to require that the defendant work on a "public works" program operated by the county. The catch-all clause is also quite broad: in setting probation, the court may "impose and require...other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends be made to society for the breach of the law".

In practice, however, most states have limited the language authorizing such judicial discretion.** Typically, these limitations include requirements that the offender make restitution, regular reports to a probation officer and family support. Limitations on particular associations which an offender may make are frequently written into probation conditions for particular offenses. Participation in treatment programs as a condition of probation, especially in "sex cases," is often specifically authorized by statute.*** Similarly, despite the broad general language of the federal probation statute, separate language was added to authorize the trial judge to require of drug dependent defendants being sentenced to probation that they accept placement in a drug-treatment program.

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* See generally, R.U. Dawson, Sentencing: The Decision as to Type, Length, and Conditions of Sentence, (Boston: Little, Brown & Co., 1969), Chapter 4. See also Model Penal Code Sec. 301.1.

** Ibid.

*** E.g., Wisc. Stat. Ann. 959.15 (6) (1958) as amended (Wisc. Laws 1961, Ch. 169).

However, with no statutory authority or limitation, some programs, even those that are involved with community service in lieu of a fine, have reported sentences of community service up to 1,000 hours. On the other hand, in Great Britain's community service program, orders were "intended primarily as a method of dealing with persons who might otherwise be sentenced to short terms of imprisonment" and not for trivial offenses.* The statute there permits service up to 240 hours, which most of the community service officers feel is too long even for those convicted of non-trivial offenses.

While it may be, therefore, that requiring "community service" as a condition of probation is within a judge's existing powers (at least in some states) certainly the better approach is to obtain explicit legislative authority and guidelines for the practice as was done in Great Britain.**

3.2 Potential Constitutional Issues of Alternative Sentencing

As with the statutory issues discussed above, there have as yet been no challenges in the courts to alternative sentencing on constitutional grounds. However, this section will discuss the potential for such a challenge so that court referral programs may protect against them.

Thirteenth Amendment

Most alternative sentencing programs are voluntary insofar as the offender, if allowed to perform community service in lieu of a fine or jail sentence, may decline and pay the fine or serve the specified time in jail. However, when an indigent is faced with the choice of a fine or community service, or when one whose employment is jeopardized by having to serve time in jail is faced with the choice of community service during non-working hours or

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* K. Pease, et al., op. cit., p. 8.

** Powers of Criminal Court Act (1973), Section 14.

jail, the pressure to accept the alternative sentence may be so great as to make it implicitly involuntary.

Thus, since some offenders may be forced into accepting community service as an alternative to a less desirable or impossible punishment, some observers argue that the community service alternative violates the Thirteenth Amendment prohibition against involuntary servitude.* However, this argument is not likely to succeed since the Thirteenth Amendment specifically exempts work done as "punishment for crime".

Due Process Concerns

The most significant due process concern involving alternative sentencing is the requirement that the offender give his "voluntary consent" to the community service option.** The usual practice is to have each participant sign a form indicating that he has "volunteered" for the program -- although in many cases such participation has been made a condition of formal probation and as such, failure to satisfactorily perform the required services may well become the basis for the revocation of probation.

But as we have learned from other areas of the criminal law involving due process, particularly those requiring waiver of some constitutional right (e.g., right to counsel, right to a jury trial, etc.) the formality of consent does not vitiate the right to later challenge the voluntariness of the consent and/or the court's authority to request consent. Nor does the consent of the offender act as enlargement upon the court's authority in the sentencing area.

The danger must be clearly recognized that a judge may occasionally try to force "consent" from an offender, either subtly or

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* Ronald Goldfarb, Jails (N.Y., Anchor Press/Doubleday, 1975) p. 62.

** The voluntary consent requirement, at the same time, is principally responsible for the lack of challenge to these programs in the courts.

directly. This danger may be found particularly in community service programs that arise out of traffic offenses that could possibly lead to the loss of one's license to operate. The process of so acquiring consent, and the resulting sentence, may, on appeal, be considered an unconstitutional violation of the Due Process Clause, and/or a greater intrusion upon the liberties of the offender than might otherwise be authorized by statute. When the number of hours assigned to community service appear great, the burden of proving that consent was voluntary becomes proportionately more difficult.

This is not to suggest that a truly voluntary program has no place in the dispositional alternatives available for an offender, particularly those involving lesser offenses. The difficulty, of course, is assuring that the offender requests such service in the first instance. It may be that the better practice would require that a description of the program alternative come from someone other than the judge following conviction. This might begin to relieve any danger of coerced consent. Assuring that the offender has full knowledge of the alternatives has the advantage of maximizing the likelihood that the defendant's consent is more than a formality. It does not, however, assure that the number of hours of service required is reasonable, short of a specific legislative provision.

To protect against the possibility of a due process conflict involving consent, initiators of court referral or community service programs should carefully monitor the role played by sentencing judges and the means by which offenders are introduced to the alternative sentence option.

A second due process issue resulting from alternative sentencing involves the procedures to be followed once an offender who opted for community service refuses to complete the allocation of hours.* If this situation results in a hearing for purposes or resentencing, the question of the offenders' right to counsel needs

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* Although perhaps 25 to 30 percent of those who initially agree to participate fail to follow through to the completion of an assignment, there are no data available on subsequent court processing of "incompletes". Chapter 4 will discuss the need and methods of data collection and analysis.

to be addressed. (This is discussed in more detail below under the equal protection issues.)

Other important due process policy questions certainly can be raised at the follow-up stages of a community work sentence which is coupled with formal or informal probation. Do courts, for example, allow a hearing with counsel to those on informal as well as formal probation? Is a suspended sentence -- which may have been framed as unusually harsh in order to "encourage" the defendant to participate -- typically activated or is sentencing reconsidered? Is partial completion of an assignment read as a mitigating factor, or is the failure to complete read as a sign of the defendant's intransigence? What sentence is applied to those who had been on informal probation?

The fact that sanctions will exist for failure to complete an assignment highlights the role of staff discretion in determining and notifying the court when a participant is "terminated". The absence of clearly defined and consistently applied criteria may raise due process concerns, and may make low budget programs unmanageable.

Finally, the administrators of court referral programs need to maintain adequate records, and be able to make them available to offenders and courts. Those who develop sentencing options have some obligation to monitor their significance-in-fact. There may well be a due process requirement that a record be kept, and made available, of each individual's experience in the court referral program. The data, so far, seems to indicate that record maintenance and retrieval systems are the court referral programs' greatest weakness.

Equal Protection Concerns

Whether or not a court referral program encroaches on the offenders' right to equal protection of the law will depend, obviously, on how careful the judges and program administrators are to protect against such encroachment. The following are four possible situations which, if not guarded against, will greatly increase the risk of conflict between the community service alternative and the Equal Protection Clause of the Fourteenth Amendment.

- Imposition of alternative service on the poor, or those unable to pay a fine.
- Stricter sentencing by judges against offenders who refuse to consent to alternative sentencing.
- Discriminatory eligibility rules (or discriminating use of judicial discretion) for alternative sentencing.
- Failure to provide placements for all offenders who are eligible and request alternative sentencing.

Typically, equal protection and due process concerns overlap. This is particularly so as regards the difficult equal protection issue resulting from coerced consent and broad interpretation of probationary powers. The courts in general, and in particular the U.S. Supreme Court, have been concerned recently with the imposition of jail terms on offenders who would not have been sentenced to jail but for their inability to pay a fine. (Substituting community service for jail, in this situation, raises the same issue.)

The custom of imposing a prison sentence on a defendant unable to pay a fine has been a common practice in American jurisprudence and one authorized by almost all the states and Federal Government. Prior to 1970, it was common practice in many jurisdictions to require those unable to pay a fine to serve time in jail for the purpose of "working off the fine". In fact, the U.S. Supreme Court appears to have tacitly approved such practice, before 1970.*

However, in 1970, the U.S. Supreme Court in Williams vs. Illinois, 399 U.S. 235 (1970) was faced with a challenge to an Illinois statute which permitted the imprisonment of a defendant for failure to pay a fine for a period in excess of the maximum term specified by the statute.

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* See The Equal Protection Clause and Imprisonment of the Indigent Defendant for Nonpayment of Fines, 64 Mich. L. Re. 938 (1966). For corresponding federal authority see 18 U.S.C. Sec. 3565, 3569.

The Court concluded that when the aggregate term of imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary non-payment of a fine, then the result is an impermissible discrimination that rests on the ability to pay and thus is a violation of the Equal Protection Clause of the Constitution.*

In Tate vs. Short, 401 U.S. 395 (1971), the Court extended its holding in Williams vs. Illinois to those offenses which do not carry any direct penalty of incarceration, and held that an indigent could not be imprisoned for failure to pay traffic fines -- at least not until all reasonable means, such as installment payments, have been exhausted.

While the Williams decision explicitly avoided consideration of the "30 days or 30 dollars" sentence, the California Supreme Court quickly concluded, on a similar equal protection rationale, that those unable but willing to pay assessed fines could not be imprisoned for their failure to pay -- such imprisonment being, in effect, punishment for indigency rather than for the offense. Such "invidious discrimination" was a denial of equal protection.** This concept has been incorporated in the Model Penal Code (secs. 7.02 and 3.021-3), which allows imprisonment for nonpayment only upon a "willful refusal to pay or to make a good faith effort to obtain the money". The Code also would limit the assessment of fines to those cases where the defendant has some ability to pay the fine assessed.

In the Williams and Tate cases the Court made reference to the alternative of installment payments as a route to collection of fines, and commented that "the State is free to choose from among

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* 399 U.S. 235, 241 (1970). When a court moves from jail sentences to community service sentences, the issue of whether the number of hours assigned exceeds the maximum jail term specified by statute is still present, although more difficult to resolve.

** In Re Antazio, 3 Col 3d 100; 473 P. 2d 999 (1970). See also Frazier vs. Jordan, 457. 2d 926 (4th Cir. 1972).

the variety of solutions already proposed and, of course, it may devise new ones." Some attempts to specify the legal authority for "work off" through volunteer service have rested on this language or similar language ("available alternate procedures")* in later decisions. A fair reading of these decisions, however, provides no definite support for that position; the quoted language clearly refers to modes of collecting the monies due, and not to alternative sanctions. It also seems apparent that the reference to the "State" reflects the legislative -- not judicial -- power to innovate. And in this connection it is worth noting that even the jail-time "work off" typically had specific statutory authorization.**

Discussion of these decisions raises an important issue concerning the practical operation of a "work off" program. Where the offender is presently unable to pay an assessed fine, may the court -- even with statutory authority -- properly insist that he participate in a work program? Would refusal to participate constitute "willful refusal to pay", thus activating the alternative of imprisonment? Or do equal protection considerations similar to those raised in Williams, Tate, Antazio, and paralell cases mandate that the offender also be offered an installment payment option consistent with his present ability to pay?***

A more difficult question arises when this issue is examined in light of the right to counsel effect of Argersinger vs. Hamlin, 407 U.S. 25 (1972). Under Argersinger, the state is prohibited from imposing a statutory sentence of imprisonment upon indigents without the assistance of counsel. But do those requirements apply when maximum sentence provides for only a fine, and imprisonment results from an inability to pay the fine?

A 1974 decision of the Florida Supreme Court, Rollins vs. Florida #42,999, Florida Supreme Court, faced this problem directly.

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* In Re Antazio, op. cit., at P. 1008.

** E.g., Illinois Rev. Stat. (1967), Ch. 38, paras. 1-7 (k).

*** Cf. Comment, "The $30 or 30 Days' Fine as Applied to Indigents," 33 La. L. Rev. 671 (1973).

In Rollins, the offenders received sentences of fines only and, due to their default, were subsequently incarcerated. The Florida Supreme Court upheld the lower court's view that the sentences were fines and not imprisonment and that the sixth and fourteenth amendments did not control. The court found no violation of Tate since the offenders were released from incarceration once they established their indigency.

The Court did offer a number of suggestions to alleviate confusion in the trial courts in the future, but made clear the fact that indigency must first be proved before relief could be granted.

This line of cases appears to be particularly instructive for those programs that require community service by indigents unable to pay fines. Once again, we face the question of consent and waiver as they relate to the true voluntary nature of the defendant's consent and thus the possible abrogation of the Equal Protection Clause of the Fourteenth Amendment.

The second situation outlined above, which may result in an equal protection problem for all court referral programs, involves stricter sentencing by judges against offenders who refuse to consent to alternative sentencing. We need not go into any more detail concerning this problem since much of the above discussion deals with the courts treatment of "over punishment" by judges; and since the data show, so far, that where available, offenders who cannot pay fines are consistently willing to accept a community service sentence.*

The third situation concerns discriminatory eligibility rules (or discriminatory judicial discretion) for alternative sentencing. This may become a real concern in view of the increasing popularity of the community service option expressed by offenders (see Chapter 2), and the total discretion by most judges in using alternative sentences in the absence of state statutory

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* The data are not instructive as to whether the alternative sentences are completed nor as to what offenders' motivations are in opting for community service.

guidelines.* Thus, as suggested in Chapter 2, judges who assign community service hours tend to do so in all cases involving certain crimes, assuming consent has been given. However, as the community service concept expands, eligibility may further be restricted. And if those restrictions can be shown to systematically exclude offenders on the basis of race, sex or financial status, the program will have to bear the burden of showing some compelling state interest in the restriction.

Related to this problem of eligibility rules is the final equal protection problem outlined above: the failure to place in community service all those offenders who are eligible for and desire it. This problem does not appear likely to occur in light of the enthusiastic response to the court referral program by the agencies in which offenders are placed (see Chapter 2). However, if the numbers of eligible and consenting offenders increases beyond the capacity of the system to place them, the result may be an equal protection infringement which jeopardizes the entire program.

In conclusion, it should be noted again that to date, there have been virtually no legal contests of the alternative sentence theory or practice, either on statutory or constitutional grounds. This lack of litigation is due, no doubt, to a number of factors including the relative newness of the program, the high level of care and preparation that has heretofore gone into the programs' creation and implementation, and the generally favorable response to community service by offenders as well as the agencies in which they are placed.

Our discussion in this chapter has, it is hoped, served to sensitize those currently operating court referral programs and those who are planning such programs to potential legal conflicts. Conceivably these conflicts may never arise. The likelihood of avoiding them, however, will be greatly increased if appropriate and affirmative action is taken to prevent the circumstances which would give rise to them.

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* Currently eligibility rules are typically limited to types of offenses.

3.3 Potential Tort Liabilities

When an agency engages in a wide range and a relatively high volume of placements, those responsible for the agency may well worry about possible injuries (whether by or to participants), resulting liability, and necessary forms of insurance coverage.

Discussions of liability are cloudy enough when straightforward volunteer programs are involved; here we are dealing with a group of participants who, realistically, are consenting but not volunteering.* Moreover, statutory treatment of volunteer programs does not exist in many states and existing legislation is far from uniform. Also, the relationship of volunteer programs to state Workmen's Compensation provisions is exceedingly complex.**

Basically, three kinds of liability are involved for such programs:***

- liability of the placing agency and/or receiving organization for the behavior of program participants
- liability of the placing agency and/or receiving organization for injuries suffered by the participant

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* In some states a volunteer will be treated as an employee when working for the state, by his or her free choice. The question remains whether consent to a court-order is sufficient to meet this criterion.

** In California, a state agency or a nonstate charitable agency may elect to treat a volunteer as an "employee" for purposes of Workmen's Compensation. Some other states have similar provisions.

*** Although now somewhat out of date, the discussion of volunteers and liability insurance in Appendix E of I.H. Scheier, et al., Guidelines and Standards for the Use of Volunteers in Correctional Programs (Department of Justice, National Institute of Law Enforcement and Criminal Justice: 1972) is a most helpful orientation paper.

- possible automobile liability (usually, of the agency at which the participant is placed) for behavior of participant*

In addition, it is possible that an organization sued because of the misbehavior of a participant may try to recover in turn from the placing agency on some theory of negligence.

While liability may sometimes be avoided through the use of waivers (particularly for injuries suffered by participants), such waivers often fail to withstand a determined challenge, especially when it is alleged that the waiver was not "freely" given. And, although a waiver may solve an agency's problem, it does nothing to help an injured volunteer who may not have adequate personal accident insurance.

One group of experts recommends that, "agencies using the services of court referred volunteers...consult their insurance carriers regarding liability coverage and...insure their volunteers under Workmen's Compensation."**

To date, none of the programs we have reviewed has reported any problems with tort liabilities, and it is certainly possible to become overly concerned with the technical concerns of liability insurance, and Workmen's Compensation. Nonetheless, agencies which utilize the services of volunteers should give careful thought to such contingencies.***

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* While similar to the two preceding forms of liability, this is covered by separate insurance policies.

** Community Service: A Sentencing Alternative, op. cit. p. 15.

*** For further insight into the potential problem of liability see, Liability in Correctional Volunteer Programs - Planning for Potential Problems (National Volunteer Parole Aide Program, American Bar Association, 1975).

CHAPTER 4
MONITORING AND EVALUATION

In spite of the presumption that community service dispositions offer a preferred alternative for all participants in the system, there needs to be at least minimal monitoring activities, both to detect abuses and to help in planning the future growth of the program. To cover all possible areas of interest, the monitored activities should extend from initial eligibility for alternative disposition through the conclusion of the offender's obligation to the court. This implies that monitoring will cover the activities of all the participants at each of these stages -- the offender, the court, service agencies, and any other formal or informal actors involved in the imposition or execution of the alternative sentence.

4.1 Monitoring System Performance

While it is not the role of the monitoring function to assess the equity with which community service is used, monitoring records can supply supporting evidence which will be helpful in such an assessment. Thus the record can begin by noting factors potentially related to questions of the fairness of the system. The offender's age, race, sex, evidence of prior behavior, legal representation and characteristics of the offense are all potential factors in the decision. Fairness requires that some of these be considered and that others be ignored. Simple tabulations of the relationship between attributes like these and case dispositions can provide prima facie evidence of discrimination if it is present. Caution in interpreting the results is important, however, since the mere presence of variability does not conclusively show unfairness. Only if it can be demonstrated that the variability is systematic and based on classifications protected by the Fourteenth Amendment (see Chapter 3) can said variability be constitutionally contested.

The necessity of legal protection of defendants' right to due process has been extensively discussed in preceeding chapters. Such protection can only be guaranteed, given the informality of probable community service implementations, by introducing an observation system under the program's control designed to have a "paper trail" covering each important decision point in the offender's career, from the initial negotiations through completion of the service assignment. Not only must the decision at these points be recorded, but the facts and logic on which the decisions are based should be maintained. Such monitoring is necessary to guarantee the fairness of treatment given both to community service offenders and to those denied such a disposition.

The presumption that the experience of community service is capable of helping offenders can be conclusively tested only by the evaluation of outcome measures. Even in the presence of such an evaluation, however, both fairness and efficiency demand that some aspects of the offender's experience is more than a simple one-way exploitation of a special labor pool, and that offender activities are in fact meaningful contributions to both the community and the offender's own development. Interviews with clients themselves provide some of this information, but these should be supplemented, at least in the case of agency service recipients, by a documentation of the exact procedures and how they are applied to community service clients.

Because community service programs depend inextricably on the quality of the service opportunities to which offenders can be referred, effort expended in monitoring this quality may have a material impact on the success of the project. Perhaps the most basic question is simply: What are the services offenders perform? Both qualitative and quantitative descriptions may be required to capture all the relevent information. The following aspects may be worth considering:

- Are tasks performed by offenders similar to those performed by other volunteers?
- Do the tasks to which offenders are assigned resemble those anticipated by the judge at disposition?
- How much time is spent by offenders in particular community service tasks?
- How much time is consumed in peripheral activities not directly contributory to the main task?

- Are there indications that offenders are accorded differential treatment by service agencies, and if so, are they distinctions of a kind likely to raise labeling problems or foster other undesirable effects?

4.2 Monitoring Client Performance

The monitoring activities described so far all relate to measuring the performance of the system. A second class of measures is appropriate for determing whether individual offenders are fulfilling their respective obligations. A defining feature of community service is the decentralized handling of offenders once they leave the court. The only way to make sure that such a decentralized system actually results in compliance with the mandates of the court is to introduce some explicit feedback mechanism whereby information is collected, at least about the offender's presence at the prescribed location, if not about the actual quality of his work. Since, in general, service recipient agencies are not accustomed to the kind of monitoring courts are likely to require, the program itself must provide both the mechanism and the incentive to respond. In practice this will mean:

- Notifying the service recipeint in advance of the assignment;
- Establishing a time schedule of specific checkpoints with the offender, of which he, the court, the project director and the recipient all hold copies;
- Verification by the project director that the recipient agency and the offender have reached the milestones on schedule;
- Defining criteria for further follow-up and investigation; and
- Reporting failure to the courts.

The credibility of the project as a dispositional alternative depends critically on the reliability of these follow-up mechanisms. It must be clear to both the court and the offender that an intent exists to carry out the mandate of the court, that the project will find out about departure from this mandate, and that the

capability exists to impose sanctions for non-compliance. Thus the visibility of the monitoring system is at least as important as any other aspect of its operation.

4.3 Evaluation of Outcomes

In any social structure with traditions as old and deep as those of the criminal justice system, there is a powerful, and often sound, presumption against innovation. This presumption has led to the general practice of placing the burden of proof of superiority on the new approach, rather than requiring the traditional system to continually defend its practices. Such a presumption has two important consequences, the first of which has already been discussed. Because of the novelty of community service sentencing as a program, the monitoring requirements likely to be imposed on it will generally be much more stringent than those normally applied to more traditional sentences such as probation or conditional suspended sentences. The second consequence of novelty is pressure to compare the effects of community service sentencing with those of more traditional alternatives. This comparison constitutes an evaluation of the changes effected by the presence of the program, first on offenders, and second on the criminal justice system.

To the extent that the existence of community service programs merely extend the range of sentencing options available to judges, it may be argued that they are justified so long as they are used, and that further evaluation is superfluous. In fact in a program where the exercise of discretion is as pervasive as it is in community service, there is presumably always the option to refuse or deny the alternative. In this context the role of evaluation can be seen as twofold: to ensure that the discretion is not abused, and to provide better information about the consequences of each alternative on which the discretion may be rationally exercised.

Thus while various formal and informal kinds of community service are likely to remain available to judges with or without specially designated projects, detailed knowledge of the effects of community service on offenders will make the sentencing decision a more rational and more functional one. Similarly, information on the

advantages and disadvantages of employing court-referred "volunteers" can help local agencies in deciding whether they should participate by accepting offenders.

The first issue of any social program is: who are the beneficiaries? Once a list of these has been compiled one can go on to ask what are the benefits? Depending on one's perspective there is the possibility that benefits accrued by one faction may constitute costs to another portion of the population. Reconciling this potentially conflicting evaluation of the results of a complex program can proceed only when the various affected groups are disaggregated.

The approaches described in this document potentially affect the following client groups:

a) The offender

b) The adjudicatory system

c) The agency receiving "volunteer" services

d) Clients of that agency

e) The victims of the offense

f) Members of the general public not participating in the above classes.

Offenders are presented volunteer services as an alternative to a disposition to which they would presumably have been subjected under traditional treatment. The justification of the treatment is not in its severity, which may be either greater or less than that of the traditional sentence, but its greater potential rehabilitative effect. There are several attitudinal issues subject to measurement in this area, which can be summarized in the following list of questions:

- Is the community service viewed as payment in full for an offense? Is the penalty, thus, more a license to commit the infraction than any indication of sanction?

- Is there any reliable direct association in the offender's mind between the "crime" and the "punishment"? Do different kinds of offenders perceive the

connection between the two differently -- e.g., do highly educated offenders see the punishment as a consequence of the crime while less schooled offenders simply believe they've "gotten out of" the problem?

- Is there anything in the community service experience to discourage offenders from repetition?

With the exception of the last question, these issues can be resolved directly only by attitude surveys of the offenders themselves. Since such measures are plagued with sources of invalidity their measurement must be viewed more as a useful insight for process evaluation than as conclusive evidence of the desirability of the program. The recidivism question can be treated objectively, and does provide an area where one may seek at least one definitive test of whether the program influences behavior.

4.4 Offender Outcomes

In addressing questions of changes in offender behavior there are two ways in which the issue may be posed:

- Is the observed condition different from the offender's behavior before the episode? and
- Is the observed behavior different from that which would have occured under some alternative handling of the case, such as fining the offender, or ignoring him?

While the former question is perhaps more interesting in a psychological or sociological sense, it is the latter issue which leads to direct policy conclusions and is subject to direct experimental test.

In particular, there is always a leading contender to replace the community service disposition, namely the traditional statutory designated penalty. It is in fact probable that judges will continue to mix community service with fines, probation, and other sentences. The question to be addressed by testing offender behavior deals with the proportion of this mix that should be allocated to community

service, and, more importantly, the rules for selecting which offenders should receive which services.

This problem has strong implications for the way in which evaluative research is designed. First, it raises the need to specify the pool from which subjects should be drawn, i.e., offenders whose sentence might a priori be either community service or traditional handling. Cases in which judges believe the appropriate choice to be clear are of interest only to test the quality of that institution and therefore need not enter the evaluation. Second, it dictates an analytic strategy which compares effects of treatment within client groups. This comparison in turn requires a third condition, namely that relevant groups be systematically identified and community service be imposed randomly with determinate probability to members of a potential client group.

Suppose that by some prior and perhaps arbitrary classification we have identified m distinct population subgroups. (Figure 3 illustrates the case for m = 5.) One of the groups is reserved for offenders prima facie ineligible for community service. (This group is designated I in the figure.) Another may contain defendants for whom community service is believed clearly desirable (V). Note that the experimental design is completely indifferent to the number of groups, subject only to the proviso that enough total cases be available in a group to permit a sufficiently powerful statistical test. In particular, the special case in which

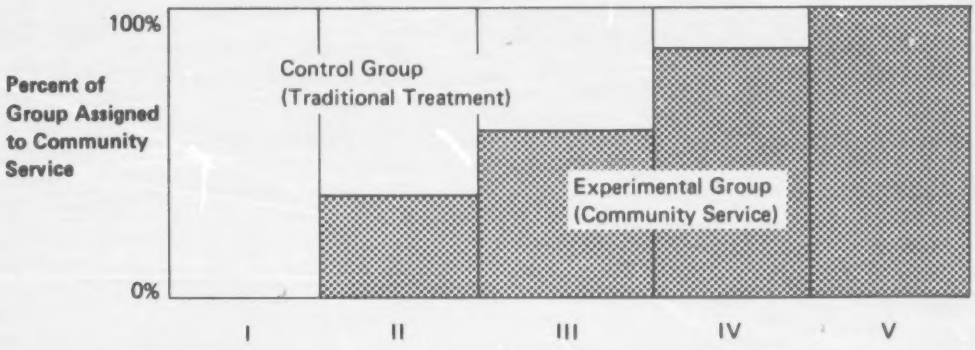

Figure 3

there are no automatic assignments ($N_I = N_m = 0$) is perfectly acceptable.

Once cases are allocated to the experimental and control conditions in groups II...M-1, straightforward analysis of variance techniques (or better, analysis of covariance) provide direct estimates both of the main effect of community service participation and of the group X treatment interaction. The latter is of greatest relevance, since it permits judgements about the differential effectiveness of the treatment among groups.

If additional background data have been collected on clients, they may be explored in the same analysis (blocking or group) to identify possible new criteria for forming groups -- and hence assigning treatment -- in the future.

4.5 Evaluating System Impact

The effects of community service on the adjudicatory system may decrese workloads in some parts of the system while increasing it in others. Simple fines may be easier to impose and collect, but may require more resources for prosecution of cases. Conversely, regular probation supervision may involve greater burdens on the system through more elaborate monitoring requirements, but may be simpler to administer.

What is clearly at issue, from the adjudicatory system's point of view, is the comparison between present costs and those of community service. Unfortunately, neither of these costs is likely to be readily available. In almost every jurisdiction, it will not be known what level of system resources would have been consumed by clients like those given community service who, instead, followed traditional paths. In general, community service clients will not be a representative sample of all criminal justice system clients, and hence may not impose the same burden on the system as does the average client. Only rarely will data be available on level of resource demands by client type, and resolution of comparative cost questions will thus depend on developing specialized data to reflect the cost of the traditonal system of treating community-service-like clients.

The most appropriate method for constructing estimates of system costs depends on the precison which is required, which in turn depends on the magnitude of cost differences to be expected. Where large differences are expected, rough approximations suffice to demonstrate their existence. If costs are likely to be close and critical, then obviously more care must be taken in their measurement. On the basis of information so far available, it seems safe to assume that in most instances cost savings will not be the primary justification for providing community service dispositions, and that accordingly the level of precision required will not be high. This in turn implies that relatively small samples and approximate measures will suffice.

If a random sample of the kind required for measuring changes in defendant behavior has been drawn, it can be used also as the basis for cost comparison. Data which include the number and duration of episodes in which members of the control group consume criminal justice system resources (e.g., meetings with probation officers) can be gathered either for the entire group, or for a subsample, if (a) expected cost differences are large, (b) there is likely to be little uncertainty about cost estimates for regular processing, and (c) there are major difficulties about gathering the data.

For some offenses the required service may take the form of direct restitution to an individual victim: for other classes of crimes no individual victim can be identifed, and the sentence then takes the form of direct general community service, either through some existing social agency or an an ad hoc basis. In either instance, it is appropriate for an evaluation of community service to look at the recipients of that service.

Some of the issues likely to be relevant to all classes of recipients are:

- Was the assigned service actually delivered as prescribed?
- Was the assigned service of a kind appropriate to the needs of the recipient?
- Was the offender's performance satisfactory?

- Were ancillary costs imposed on the recipient by virtue of the judicial nature of the recruitment? (That is, was additional supervison or record-keeping required?)

An additional set of issues apply particularly to agency (as opposed to individual) recipients of community service:

- How have the services provided by the agency been affected by changes in the number and character of their volunteer population?
- Are there detectable secondary impacts on clients of the agency?

Because the kinds of agencies providing community service opportunities are many and varied, no single rigid design can be expected to measure the effects in all. At least in the early stages of an evaluation, open-ended interviews and case studies can be expected to capture more useful information about effects, especially unintended effects, than could a more rigorous but more limited quantitative design. As programs gain familiarity with the kinds of issues likely to concern community service recipient agencies, and as the numerically largest sectors of this group come to be identified, special quantitative investigations of major users may be justified. Given the present state of knowledge, however, loosely structured exploratory methods seem most appropriate.

Community service affects not only the specific groups identified above, but also can work in various symbolic and direct ways to change the criminal justice system and its relation to the general public. Criminal law serves not only as a mechanism for incapacitating or deterring wrongdoers, but also as a device whereby society can embody statements of moral and cultural norms. The number of times marijuana statutes are actually used to prosecute violators, for instance, approaches zero percent of the probable number of violations. Arguments for and against their continued existence tend to rely more on the question of whether society "should" countenance drug use, rather than on the question of the desirability of actually punishing those rare individuals who get caught.

One can identify a fairly large body of laws serving such largely normative purposes, and it is primarily violators of this class of law who, to date in the United States, have provided the bulk of community service clients. As public awareness of the changes due to community service spreads, so also will changing perceptions of the degree to which laws and the criminal justice system continue to fulfill this normative function. It is important for these purposes to distinguish reality from public perception. The latter can only be based on limited and sometimes distorted data about actual practice, and relies on models of cause and effect which may not be logical. Nevertheless, the long term survival of the program depends on its eventual ability to gain and hold public acceptance. It is therefore necessary to monitor the sources of information about the program (the press, direct personal experience, hearsay, the program's own publicity activities) to determine the completeness and accuracy of the image which is being projected.

In cases where public opinion is likely to be an issue, further direct monitoring via a general population survey may be warranted. Such a survey is particularly appropriate if community service is but one of several changes in the criminal justice system likely to influence public opinion. In such a context it is clearly advantageous to probe for the contributions of community service both as a component of the package, and in its own right.

As part of the criminal justice system, community service needs to be concerned not only with its perception by the public as a whole, but by the more restricted audience comprising criminal justice planners and practitioners. Ultimately such programs depend on the cooperation of every functional agency in the system. It follows that it is clearly in the program's best interests to be aware of its impact on these other agencies, and equally as important to understand how these other agencies perceive its impact. As was the case with impacts on non-criminal justice agencies discussed above, here too unstructured exploratory methods seem most applicable. Informal discussion with key representatives of the community is more likely to identify any potential or actual problems than any rigorously predetermined research method.

4.6 Costs and Benefits of Community Service Work

As is true of any social program, it is necessary to evaluate efforts and perform program assessments in order to estimate the costs and benefits of a program. The community service programs reviewed in Chapter 2 have wide ranging and growing placement networks. In very few cases have they been unable to place a court referral; once placed, participants might average 20 to 60 hours of community work. Commenting on the Multnomah County Alternative Community Service Program, the District Court Administrator, who is also Assistant Project Director, wrote that, in his opinion, in addition to the achievement of specific program goals:

> Many side benefits have resulted from the establishment of the program. More jail space is now available for the serious offenders, the probation office's caseload has been substantially reduced, the community involvement in the program has made the citizenry more aware of the Court's function and responsibility in the criminal justice system. The participating offenders, likewise, have become more aware of the needs of the community and their role in it. Through the program, offenders and the community at large have made each other mutual beneficiaries in a common enterprise.

Placements in agencies often increase the ability of community programs to deliver services, and in some cases the quality of the work is improved. In other cases, however, it may be that the work done is primarily of value to the agency itself -- and to court-referred participants -- and is not easily translated into an improvement in the extent or quality of services. Because of these factors, attempts to gauge the "cost effect" of volunteer programs cannot rest on a direct conversion of hours-into-dollars.

In cost/benefit analyses, benefits must be valued in society's terms, rather than in terms of the volunteers, i.e., not only as possible wages foregone. Thus, benefits must be considered in terms of the maximum price someone would pay in order to have a program continue. In this regard, it is clear that the labor

value of the hours contributed by participants far exceeds that maximum price.*

To the degree that community service work is done in lieu of payment of a fine, moreover, alternative service may actually incur certain costs, and it is not clear that such service programs are an efficient overall allocation of social resources. In most jurisdictions fines are transferred to a general fund; the revenue lost to governmental programs through reductions in the use of fines may be considerable, and those revenues may need to be replaced by tax dollars.

While the question of the perspective from which to value services in a cost-benefit analysis is complex, there is little question that a wide range of community agencies have responded to the opportunity for such placements, and that they have reacted very positively to their experience with court referral programs. It is also apparent that many of those who participate in the program conclude that its existence was a benefit for them.

Most participants have chosen or suggested participation in the program in lieu of a traditional sentence.** For these defendants, the opportunity to participate in an alternative program is itself a benefit; however, there have been many other positive sentiments voiced. Although no systematic survey of program participants in America has been conducted, some participants have commented that the experience was both personally rewarding and a positive reflection on the criminal justice process. The following are several examples of the type of comments made by participants concerning their community service sentence:

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* The operating costs of some of these programs are in part underwritten by the volunteer groups themselves.

** The program reports reviewed reflect the fact that the courts will often raise the possibility of community service sua sponte, and that in some cases the court may have insisted on such service and imposed it as a term of formal probation. However, because most program reports pick up at the referral stage, it is impossible to determine the frequency of either practice.

"I actually enjoyed the work. In fact I am seriously considering to continue with volunteer work....It gave me a higher opinion of our judicial system. I know that if I would have been given a fine or some other punishment, I would have gone away bitter toward the system and the law. Instead, the program turns the punishment into useful energy and gives one the pride of knowing you've helped another person."

"Most laws are broken when a crime is committed against someone or something in the community that the wrongdoer lives in. Since this culture feels that repayment is a must, the wrongdoer can best fulfill his obligation by doing work for the community. It would be a lot more beneficial to the community than if he were in jail."

"In other words, the alternative work program is a more fair and personal approach to retribution than the usual form of punishment."

"I think they should use this volunteer work more often cause I think a person can get a lot more out of it than a fine. Cause money can hurt your pocket for a while but you can't remember it as well as a learning experience."

"I came to respect the courts and realize that the law is made for people and that the courts aren't out to get you but are there to help you."

"I am aware now more than ever in my life as having been sheltered....certainly most persons privileged as I, have not stood before a judge nor have they had to face themselves as possible outcasts in the eyes of members of our society...in such a situation it is hard to find the resources that will help one see oneself as a valuable human being....I want to say how valuable the program to which I was assigned was and is in my life. To be able to spend time with people, help each other, to be able to feel like I am constructively working out my debt to society and helping children become better citizens, is a debt beyond words."

Another indicator of the positive effect of program participation is that a sizable number of participants continue to volunteer after completing their assigned hours. In Alameda County, for example, roughly ten percent of those who completed their commitment also gave additional hours or became regular volunteers at the agency at which they had been placed.

Finally, although referral programs emphasize that they are not structured to deliver social services to participants, they also note that participating agencies often make "invaluable social and referral services available to meet specific needs of assignees". This can be an important aspect of these programs, given the high proportion of participants whose offenses are alcohol-related. Indeed, it might be argued that the opportunity to make a concrete contribution to the welfare of others is itself a social service, especailly when the participant is thanked as a volunteer, not stigmatized as "a criminal".

Insofar as community service programs are used by sentencing judges as an alternative to incarceration, there may be savings for the criminal justice system in terms of the marginal costs of imprisonment.* To the extent that sentencing and parole practices are responsive to the availability of jail space, however, this potential saving may disappear.

A more likely source of savings for the criminal justice system is in the reduction of probation caseloads. While the Alternative Service Program is handled by court personnel, referrals in the other programs examined are handled by volunteer groups, with funding from outside the criminal justice system, or by the defendant him- or herself. Moreover, once a placement is made, supervision may be handled by the cooperating agency in many cases.

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* It must be stressed that it is the marginal cost of incarcerating another individual and not the average cost of incarceration that must be calculated. Where the program participants who would otherwise be imprisoned are relatively few, these marginal changes can be very small.

Given this extensive help from the outside, it may be possible to reduce the need for extensive probation department supervision of those offenders who participate in community service activities. In addition, probation department costs might be further reduced by shifting defendants from formal probation to informal ("court") probation, as appears to have occured in the Alternative Service Program. The cost-reducing effect of caseload reductions cannot, however, be assumed.*

Where community service is substituted for payment of a fine, the court system may benefit from a sharp reduction in supervision costs. Where the court would have assessed "court costs", of course, that dollar volume is lost, for, as noted above, fines generally flow back into a jurisdiction's general fund.

The entire court system may greatly benefit from the effect of alternative community service programs on criminal justice personnel and on the public. The feeling that a court system is "doing something meaningful" with a group of criminal offenders -- and in a manner that produces tangible benefits for the community -- is one that can excite and encourage those who work within the criminal justice system. Moreover, communication of that image to the general public is an important step toward warning the less serious offender that the court, while not an ogre, is also not a "revolving door". The alternative sentencing system may also serve to reassure the general public that the criminal justice system has an interest in the positive, as well as the negative, side of the community's life.

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* Note, too, that in the overall cost-benefit picture the cases have merely shifted to another caseload.

APPENDIX A

Guidelines for Sentencing to Community Service Programs
California Judicial Criminal Justice Planning Committee

Guidelines for Sentencing to Community Service Programs
California Judicial Criminal Justice Planning Committee

Pursuant to the authority vested in the Judicial Criminal Justice Planning Committee under Penal Code Section 13830 to assist the Office of Criminal Justice Planning in the "...effective planning and implementation of court projects...", the Judicial Planning Committee has adopted the attached Grant Application Review Criteria which will be applied in reviewing all future court referral projects.

These criteria are intended to indicate solely the factors the Committee will use in making its recommendations on these projects to the California Council on Criminal Justice and the Office of Criminal Justice Planning. They are not meant to dictate the internal management structure and/or ongoing program operation of these projects. The Committee is fully cognizant that its responsibility does not enter into the internal decision-making processes of applicants but is limited to assuring the development of quality grant projects in the courts area.

The effective date of the criteria will be February 1, 1977 and they will apply to all court referral project grant applications submitted after that date, including those for ongoing projects.

DEFINITION

A Court Referral Program (CRP) is an agency directly affiliated with local government or operating under its sponsorship, usually at the county level, which places selected, sentenced offenders into community service for a stated number of hours or days in lieu of, or in addition to, fines or jail sentences. The sentencing court determines eligibility, length of service, and the time frame within which the work is to be completed.

Court Referral Programs carry out their mission by referring assignees to tax-supported or non-profit private agencies for performance of services which upgrade the effectiveness of such agencies to the benefit of the public. It is preferable that priority be given to sending referrals to a broad base of public or taxpayer supported agencies.

While the largest category of assignees is probably of low income for whom payment of a fine would be an undue hardship, the efficacy of the approach is not limited to such persons.

GRANT APPLICATION REVIEW CRITERIA

A CRP grant application should meet the following minimum guidelines.

The program should have:

1. A public sponsor and an advisory or governing board representative of the total community, upon which sits at least one judge of the referring courts.

2. A separate and distinct staff (with no other primary function) with adequate time and resources to develop and administer the program.

3. A staff of persons who reflect through vocational, education and/or life experience the ability to handle adequately not only program mechanics, but communications with court personnel, user agencies, assignees and the community at large.

4. Clearly stated evaluation criteria, specifically:

   a. The screening procedures to be developed for applicants;

   b. The methodology for training and assisting community agencies on how to best use court referred volunteers;

   c. The procedures for providing follow up service and solving placement problems;

   d. The mechanisms to provide the courts with timely and accurate progress reports;

   e. The mechanisms whereby records will be maintained on the number of referrals assigned, accepted, where assigned, demographic breakdowns, number of hours served, number of community agencies served, and projections for subsequent years.

5. A mechanism by which the local courts and/or probation department can review the program.

6. A mechanism by which the program can consult with the courts on program operation.

7. Written standards for participating user agencies with plans for periodic reevaluation.

APPENDIX B

Program Agreement Form
of
Alternative Community Service Program
of Multnomah County

District Court of Oregon For Multnomah County
1021 S. W. 4th Avenue Room 154
Portland, Oregon 97204
248-5191

District Court of Oregon For Multnomah County

ALTERNATIVE COMMUNITY SERVICE PROGRAM AGREEMENT

After being advised by the court of the Alternative Community Service Program, I voluntarily agree to perform _____ hours of unpaid community service for a non-profit agency. I agree to abide by the following conditions of the program:

1. A schedule will be arranged for me that is agreeable with me and with the agency. This schedule will enable me to complete the work program prior to the assigned "due date" (_____). This schedule can only be altered with permission of the District Court Program Coordinator or the non-profit agency supervisor. Failure to comply with this schedule, i.e., no show or tardiness, will result in termination of the assignment.

2. Should my contribution of services be unsatisfactory or be performed with an uncooperative attitude, as assessed by the agency representative or the District Court Program Coordinator, the assignment will be terminated.

3. I understand that should I experience any difficulties or problems in performing the volunteer services to the assigned non-profit agency, I am to contact the District Court Program Coordinator for resolution of the problem.

4. Additional Conditions:

I have read, or had read to me, the conditions under which I will be assigned an agency through the District Court Alternative Community Service Program and the conditions under which this assignment will be continued. I fully understand that my failure to comply with the above conditions will result in the termination of this assignment and the referral of this case back to the sentencing judge for appropriate disposition.

Signature of the Assignee_____

Witness and Title_____Date_____

SENTENCING TO COMMUNITY SERVICE

To help LEAA better evaluate the usefulness of this document, the reader is requested to answer and return the following questions.

1. What is your general reaction to this document?
   - ☐ Excellent
   - ☐ Above Average
   - ☐ Average
   - ☐ Poor
   - ☐ Useless

2. To what extent do you see the document as being useful in terms of: (check one box on each line)

	Highly Useful	Of Some Use	Not Useful
Modifying existing projects	☐	☐	☐
Training personnel	☐	☐	☐
Administering ongoing projects	☐	☐	☐
Providing new or important information	☐	☐	☐
Developing or implementing new projects	☐	☐	☐

3. To what specific use, if any, have you put or do you plan to put this particular document?
   - ☐ Modifying existing projects
   - ☐ Training personnel
   - ☐ Administering ongoing projects
   - ☐ Developing or implementing new projects
   - ☐ Other: _____

4. Do you feel that further training or technical assistance is needed and desired on this topic? If so, please specify needs.

5. In what ways, if any, could the document be improved: (please specify, e.g. structure/organization; content/coverage; objectivity; writing style; other)

6. How did this document come to your attention? (check one or more)
   - ☐ LEAA mailing of package
   - ☐ Contact with LEAA staff
   - ☐ Your organization's library
   - ☐ Other (please specify) _____
   - ☐ LEAA Newsletter
   - ☐ National Criminal Justice Reference Service

7. Have you contacted or do you plan to contact the project site for further information?

8. Check ONE item below which best describes your affiliation with law enforcement or criminal justice. If the item checked has an asterisk (*), please also check the related level, i.e.,

☐ Federal ☐ State ☐ County ☐ Local

☐ Headquarters, LEAA	☐ Police *
☐ LEAA Regional Office	☐ Court *
☐ State Planning Agency	☐ Correctional Agency *
☐ Regional SPA Office	☐ Legislative Agency *
☐ College, University	☐ Other Government Agency *
☐ Commercial Industrial Firm	☐ Professional Associations *
☐ Citizen Group	☐ Crime Prevention Group *

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Your Position _____
Organization or Agency _____
Address _____

Telephone Number Area Code: _____ Number: _____

10. If you are not currently registered with NCJRS and would like to be placed on their mailing list, check here. ☐

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